

PART VI – STANDARD PERMIT CONDITIONS

A. Duty to Comply

1. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act (CWA) and is grounds for enforcement action; for permit termination, revocation and reissuance or modification or for denial of a permit application.
2. Penalties for Violations of Permit Conditions

The Director will adjust the civil and administrative penalties listed below in accordance with Civil Monetary Penalty Inflation Adjustment Rule (Federal Register: December 31, 1996, Volume 61, Number 252, pages 69359-69366, as corrected, March 20, 1997, Volume 62, Number 54, pages 13514-13517) as mandated by the Debt Collection Improvement Act of 1996 for inflation on a periodic basis. This rule allows EPA's penalties to keep pace with inflation. The Agency is required to review its penalties at least once every four years thereafter and to adjust them as necessary for inflation according to a specialized formula. The civil and administrative penalties listed below were adjusted for inflation starting in 1996

a. Criminal

- i. Negligent Violations. The CWA provides that any person who negligently violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation or by imprisonment for not more than 1 year or both.
- ii. Knowing Violations. The CWA provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than \$ 5,000 not more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or both.
- iii. Knowing Endangerment. The CWA provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than \$250,000 or by imprisonment for not more than 15 years, or both.
- iv. False statement. The CWA provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine or not more than \$10,000 or by imprisonment for not more than two years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than four years, or by both.

b. Civil penalties- The CWA provides that any person who violates a permit condition implementing sections 301, 302, 306, 306, 307, 318 or 405 of the Act is subject to a civil penalty not to exceed \$ 27,500 per day for each violation.

c. Administrative Penalties

The CWA provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows:

- i. Class I penalty. Not to exceed \$11,000 per violation nor shall the maximum amount exceed \$ 27,500.
- ii. Class II penalty. Not to exceed \$11,000 per day for each day during which the violation

continues nor shall the maximum amount exceed \$137,500.

B. Continuation of the Expired General Permit

If this permit is not reissued prior to the expiration date, it will be administratively continued in accordance with the Administrative Procedures Act and remain in force and in effect as to any particular permittee as long as the permittee submits a new Notice of Intent two (2) months prior to the expiration of this permit. However, once this permit expires, EPA cannot provide written notification of coverage under this general permit to any permittee who submits a Notice of Intent to EPA after the permit's expiration date. Any permittee who was granted permit coverage prior to the expiration date will automatically remain covered by the continued permit until the earlier of :

- (1) Reissuance of this permit, at which time the permittee must comply with the Notice of Intent conditions of the new permit to maintain authorization to discharge; or
- (2) The permittee's submittal of a Notice of Termination; or
- (3) Issuance of an individual permit for the permittee's discharges; or
- (4) A formal permit decision by the Director not to reissue this general permit, at which time the permittee must seek coverage under an alternative general permit or an individual permit.

C. Need to Halt or Reduce Activity not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty to Mitigate

The permittee must take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

F. Duty to Provide Information

The permittee must furnish to the Director or an authorized representative of the Director any information which is requested to determine compliance with this permit. The permittee shall also furnish to the Director upon request, copies of records required to be kept by this permit.

G. Signatory Requirement

- i. All applications, reports, or information submitted to the Director shall be signed and certified. (See 40 CFR 122.22)
- ii. The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation or both.

H. Oil and Hazardous Substance Liability

Nothing in this permit shall be constructed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the CWA or section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

I. Property Rights

The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

J. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to the circumstances, and the remainder of this permit shall not be affected thereby.

K. Requiring an Individual Permit or an Alternative General Permit

- i. The Director may require any person authorized by this permit to apply for and/or obtain either an individual NPDES permit or an alternative NPDES general permit. Any interested person may petition the Director to take action under this paragraph. Where the Director requires the permittee to apply for an individual NPDES permit, the Director will notify the permittee in writing that a permit application is required. This notification shall include a brief statement of the reasons for this decision, an application form, a statement setting a deadline for the permittee to file the application, and a statement that on the effective date of issuance or denial of the individual NPDES permit or the alternative general permit as it applies to the individual permittee, coverage under this general permit shall automatically terminate. Applications must be submitted to the Regional Office. The Director may grant additional time to submit the application upon request of the applicant. If the permittee fails to submit in a timely manner an individual NPDES permit application as required by the Director under this paragraph, then the applicability of this permit to the permittee is automatically terminated at the end of the day specified by the Director for application submittal.
- ii. Any discharger authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit. In such cases, the permittee must submit an individual application in accordance with the requirements of 40 CFR 122.26(c)(1)(ii), with reasons supporting the request, to the Director at the following address: Office of Ecosystem Protection, United States Environmental Protection Agency, One Congress Street- Suite 1100, Boston, Massachusetts 02114. The request may be granted by issuance of any individual permit or an alternative general permit if the reasons cited by the permittee are adequate to support the request.
- iii. When an individual NPDES permit is issued to a discharger otherwise subject to this permit, or the discharger is authorized to discharge under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit or the date of authorization of coverage under the alternative general permit, whichever the case may be. When an individual NPDES permit is denied to an operator otherwise subject to this permit, or the operator is denied for coverage under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the date of such denial, unless otherwise specified by the Director.

L. State/Tribal Environmental Laws

- i. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State/Tribal law or regulation under authority preserved by section 510 of the Act.
- ii. No condition of this permit releases the permittee from any responsibility or requirements under other environmental statutes or regulations.

M. Proper Operation and Maintenance

The permittee must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by a permittee only when necessary to achieve compliance with the conditions of the permit.

N. Inspection and Entry

The permittee must allow the Director or an authorized representative of EPA or the State/Tribe, upon the presentation of credentials and other documents as may be required by law, to:

- i Enter the permittee premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;
- ii Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit; and
- iii Inspect at reasonable times any facilities or equipment (including monitoring and control equipment).

PART VII - DEFINITIONS

Best Management Practices (BMPs) - means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal or drainage from raw material storage.

Commencement of Construction means the initial disturbance of soils associated with clearing, grading or excavating activities or other construction activities.

Control Measure as used in this permit, refers to any BMP or other method, used to prevent or reduce the discharge of pollutants to waters of the United States.

CWA means the Clean Water Act, or the Federal Water Pollution Control Act, 33 U.S.C 1251 *et seq.*

Director means the Regional Administrator of the Environmental Protection Agency or an authorized representative.

Discharge when used without qualification means the “discharge of a pollutant.”

Discharge of Storm Water Associated with Construction Activity as used in this permit, refers to a discharge of pollutants in storm water runoff from areas where soil disturbing activities (e.g. clearing, grading, or excavation), construction materials or equipment storage or maintenance (e.g. fill piles, borrow areas, concrete truck washout, fueling) or other industrial storm water directly related to the construction process are located. (See 40 CFR 122.26(b)(14)(x) and 40 CFR 122.26(b)(15) for the two regulatory definition of storm water associated with construction sites).

Discharge of Storm Water Associated with Industrial Activity is defined at 40 CFR 122.26(b)(14).

EPA means the United States Environmental Protection Agency

Facility or Activity means any NPDES “point source” or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.

General Permit means an NPDES permit issued under §122.28 authorizing a category of discharges under the CWA within a geographical area.

Indian Country, as defined in 18 U.S.C. 1151, means : (a) All lands within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (b) all dependent Indian communities with the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. This definition includes all land held in trust for an Indian tribe.

Industrial Activity as used in this permit refers to the eleven categories of industrial activities included in the definition of discharges of storm water associated with industrial activity.

Industrial Storm Water as used in this permit refers to storm water runoff associated with the definition of discharges of storm water associated with industrial activity.

MADEP means Massachusetts Department of Environmental Protection

Municipality means a city, town, borough, county, parish, district, association, or other public body created by or under State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section

208 of the CWA.

National Pollutant Discharge Elimination System (NPDES) means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318 and 405 of the CWA. The term includes an “approved program.”

NHDES means New Hampshire Department of Environmental Services.

Owner or operator means the owner or operator of any “facility or activity” subject to regulation under the NPDES program.

Point Source means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

Pollutant is defined at 40 CFR 122.2. A partial listing from this definition includes: dredged spoil, solid waste, sewage, garbage, sewage sludge, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial or municipal waste.

Runoff Coefficient means the fraction of total rainfall that will appear at the conveyance as runoff.

State means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, or an Indian Tribe meeting the requirements of 40 CFR 123.31.

Storm Water means storm water runoff, snow melt runoff, and surface runoff and drainage.

Storm Water Associated with Industrial Activity refers to storm water, that if allowed to discharge, would constitute a “discharge of storm water associated with industrial activity” as defined at 40 CFR 122.26(b)(14) and incorporated here by reference.

Waters of the United States means:

1. All waters which are currently used, were used in the past or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.
2. All interstate waters, including interstate wetlands;
3. All other waters such as interstate lakes, rivers, streams, (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes or natural ponds the use, designation or destruction of which would affect or could affect interstate or foreign commerce including any such waters;
 - a. Which are or could be used by interstate or foreign travelers for recreational or other purposes.
 - b. From which fish or shell fish are or could be taken and sold in interstate or foreign or;
 - c. Which are used or could be used for industrial purposes by industries in interstate commerce.
4. All impoundments of waters otherwise defined as waters of the United States under this definition;
5. Tributaries of waters identified in paragraphs (1) through (4) of this definition;
6. The territorial sea; and
7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs 1 through 6 of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this

definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal areas in wetlands) nor resulted from the impoundment of waters of the United States. Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by other federal agency for the purposes of the Clean Water Act jurisdiction remains with EPA.

Wetlands means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

PART VIII - REOPENER

If there is evidence indicating that the storm water discharges authorized by this permit cause, have the reasonable potential to cause, or contribute to a violation of a water quality standard, the permittee may be required to obtain an individual permit or an alternative general permit in accordance with Part VI.K of this permit, or the permit may be modified to include different limitations and/or requirements.

Permit modification or revocation will be conducted according to 40 CFR 122.62, 122.63, 122.64 and 124.5.

PART IX - 401 WATER QUALITY CERTIFICATION REQUIREMENTS

Massachusetts:

The Massachusetts Department of Environmental Protection in accordance with the provisions of MGL Ch. 21, s. 26-53, 314 CMR 4.00, 314. CMR 5.00, 314 CMR 9.00 and Section 401 of the Federal Clean Water Act (Public Law 92-500 as amended) issues this Section 401 Water Quality Certification for the *General Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems* in Massachusetts. The Department has determined that compliance with the conditions of this permit will result in compliance with applicable water quality standards, as required by the Massachusetts Surface Water Quality Standards regulations (314 CMR 4.00) and with 314 CMR 9.04 and that the permittee will be in compliance with Sections 301, 302, 303, 306 and 307 of the Federal Clean Water Act. The Department issues this Water Quality Certification subject to the following conditions, which are to be added to the final permit as state water quality certification requirements. The conditions outlined below will be presented in the following order:

- A. state statutes and regulations relating to water quality and surface water discharges;
- B. adherence to the Massachusetts Storm Water Management Policy, March 1997;
- C. other state laws, regulations, and policies
- D. areas affected by water quantity and recharge;
- E. environmental priority resource areas designated for protection;
- F. general conditions which can be implemented by the Department and
- G. permit compliance

A. State Water Quality Regulations and Policies:

1. The permittee shall comply with the Massachusetts Clean Waters Act (Ch. 21 s. 26-53).
2. The permittee shall comply with the conditions in 314 CMR 4.00- Surface Water Quality Standards.
3. The permittee shall comply with the conditions in 314 CMR 3.00- Surface Water Discharge Permit Program.
4. The permittee shall comply with the Wetlands Protection Act, Ch. 131 s. 40 and its regulations, 310 CMR 10.00 and any Order of Conditions issued by a Conservation Commission or Superseding Order of Conditions issued by the Massachusetts Department of Environmental Protection.

B. Department of Environmental Protection Storm Water Management Policy:

1. The permittee shall comply with the Massachusetts Storm Water Management Policy, March 1997 and applicable Storm Water Performance standards, as prescribed by state regulations promulgated under the authority of the Massachusetts Clean Waters Act, MGL c. 21, ss 23-56 and the Wetlands Protection Act, MGL c. 131 s. 40.

C. Other State Environmental Laws, Regulations, Policies:

1. The permittee shall comply with the Massachusetts Endangered Species Act (MESA)(MGL c. 131A and regulations at 321 CMR 10.00) and any actions undertaken to comply with this storm water permit, shall not result

in non-compliance with the MESA.

2. The permittee shall not conduct activities under this permit that will interfere with implementation of mosquito control work conducted in accordance with Chapter 252 and Chapter 252, s. 5A and DEP Guideline Number BRP G01-02, West Nile Virus Application of Pesticides to Wetland Resource Areas and Buffer Zones, and Public Water Systems.

D. Resource Areas Required for priority consideration in Storm Water Management Program

1. The permittee shall identify discharges to the following resource areas as a priority and indicate in their storm water management program how storm water controls will be implemented. Identified priority areas include:

- a. public water supplies
- b. public swimming beaches
- c. Outstanding Resource Waters (as designated in 314 CMR 4.00)
- d. shell fishing areas (open versus closed areas)
- e. rivers, ponds, lakes and coastal waters which are on the Department's 303d list of impaired waters
- f. cold water fishery river segments as identified in 314 CMR 4.00

E. Other Department Directives:

1. The Department may require the permittee to perform water quality monitoring during the permit term if monitoring is necessary for the protection of public health or the environment as designated under the authority at 314 CMR 3.00.

2. The Department may condition the general permit to require measurable verification of the effectiveness of BMPs and other control measures in the permittee's management program, including water quality monitoring.

3. The Department has determined that compliance with this permit does not protect the permittee from enforcement actions deemed necessary by the Department and its associated regulations to address an imminent threat to the public health, a significant environmental problem and a resultant violation of the Massachusetts Clean Waters Act. Ch. 21 ss 26-53.

4. The Department reserves the right to modify this 401 Water Quality Certification if any changes, modifications or deletions are made to the general permit.

F. Permit Compliance:

1. Should any violation of the Massachusetts Surface Water Quality Standards (314 CMR 4.00) or the conditions of this certification occur, the Department will direct the permittee to correct the problem(s). The Department has the right to take any action as authorized by the General Laws of the Commonwealth to address the problem and permit violation. Substantial civil and criminal penalties are authorized under MGL Ch. 21, Section 42 for discharging into Massachusetts's waters in violation of an order or permit issued by this Department. This certification does not relieve the permittee of the duty to comply with other applicable Massachusetts statutes and regulations.

Dated:

Signed: _____

Glenn Haas, Director

Division of Watershed Management